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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/800,114	03/06/2001	Heinrich Lang	LMX-129	2747

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EXAMINER

SHAFER, RICKY D

ART UNIT	PAPER NUMBER
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2872

DATE MAILED: 10/22/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	09/800,114	Applicant(s)	LANG ET AL
Examiner	R.D. SHAFER	Group Art Unit	2872

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 month MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

Responsive to communication(s) filed on 7/30/02

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

Claim(s) 10 - 34 is/are pending in the application.

Of the above claim(s) 13 AND 29-34 is/are withdrawn from consideration.

Claim(s) _____ is/are allowed.

Claim(s) _____ is/are rejected.

Claim(s) _____ is/are objected to.

Claim(s) 10-12 AND 14-28 are subject to restriction or election requirement

Application Papers

The proposed drawing correction, filed on _____ is approved disapproved.

The drawing(s) filed on _____ is/are objected to by the Examiner

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).

All Some* None of the:

Certified copies of the priority documents have been received.

Certified copies of the priority documents have been received in Application No. _____.

Copies of the certified copies of the priority documents have been received
in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

Information Disclosure Statement(s), PTO-1449, Paper No(s). _____ International Summary, PTO-413

Notice of Reference(s) Cited, PTO-892 Notice of Informal Patent Application, PTO-152

Notice of Draftsperson's Patent Drawing Review, PTO-948 Other _____

Office Action Summary

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1. Applicant's election of species "A", depicted by Fig. 1, in Paper No. 10 is acknowledged.

Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

2. Claims 13 and 29-34 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species. Election was made without traverse in Paper No. 10.

3. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 10-12, 15-22 and 28, drawn to a rear view mirror assembly comprising a holding component, a first clamping part and a second clamping part with particular details of the clamping parts, classified in class 359, subclass 871.

II. Claims 23 and 24, drawn to a rear view mirror assembly comprising a holding component, a first clamping part, a second clamping part and a mirror carrier plate with separate details of the mirror with respect to the carrier plate, classified in class 359, subclass 871.

III. Claims 25 and 26, drawn to a rear view mirror assembly comprising a holding component, a first clamping part, a second clamping part and an electrically controllable positioning apparatus, classified in class 359, subclass 843.

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IV. Claims 27, drawn to a rear view mirror assembly comprising a holding component, a first clamping part, a second clamping part, and a housing cover classified 359, subclass 871.

4. Claim 14 link(s) inventions I-IV. The restriction requirement among the linked inventions is subject to the nonallowance of the linking claim(s), claim 14. Upon the allowance of the linking claim(s), the restriction requirement as to the linked inventions shall be withdrawn and any claim(s) depending from or otherwise including all the limitations of the allowable linking claim(s) will be entitled to examination in the instant application. Applicant(s) are advised that if any such claim(s) depending from or including all the limitations of the allowable linking claim(s) is/are presented in a continuation or divisional application, the claims of the continuation or divisional application may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Where a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. *In re Ziegler*, 44 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

5. The inventions are distinct, each from the other because:

Inventions II-IV and I are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because of the

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omission of the particular details of the clamping parts. The subcombination has separate utility such as a rearview mirror without the separate details of the mirror with respect to the carrier plate, an electrically controllable positioning apparatus or a housing cover.

6. Inventions II, III and IV are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, each of the inventions II-IV has separate utility such as a assembly with the separate details of the other invention(s). For example, the assembly of invention II has separate utility as a mirror assembly without the electrically controllable positioning apparatus of invention III or the housing cover of invention IV, the assembly of invention III has separate utility as a mirror assembly without the separate details of the mirror with respect to the carrier plate of invention II or the housing cover of invention IV, ...etc. See MPEP § 806.05(d).

7. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, recognized divergent subject matter or the search required for one the inventions is not required for any of the remaining inventions as indicated below. Therefore, restriction for examination purposes as indicated as proper.

The search required for invention I would further require a search in class 248, subclass 475.1 which would not be required for inventions II- IV.

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The search required for invention II would further require a search in class 359, subclass 838 which would not be required for inventions I, III and IV.

The search required for invention IV would further require a search in class 359, subclass 511 which would not be required for inventions I-III.

8. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

9. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(l).

10. Any inquiry concerning this communication should be directed to R. D. Shafer at telephone number (703) 308-4813.

RDS

October 21, 2002

R. D. Shafer
RICHARD D. SHAFER
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